

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.569 of 2006

Mafatlal Dayashankar Dave .. Appellant

versus

M/s.D.K. Builders & Developers & ors. .. Respondents

...

Mr.J. Rais i/b Rajesh N. Kachare for the appellant.

Mr.K.S. Patil for respondent nos.1 and 2.

Mr.C.R. Naidu for respondent nos.3 and 4.

CORAM : D.G. KARNIK, J

DATED : 24th August 2006.

P.C.:

1. Heard learned counsel for the appellant and respondent nos.1 to 4.

2. This appeal is directed against the order

dated 21st April 2006 passed by Civil Judge, Senior Division, Palghar rejecting the appellant's application for injunction.

3. The suit property originally belonged to respondent nos.5 to 8. They executed a sale deed dated 20th May 1988 executed in favour of respondent nos.1 and 2. The suit was filed by the appellant for a declaration that the sale deed was illegal and void and for setting aside the registration of the sale deed. The appellant further prayed in the suit that respondent no.1 be ordered and directed to hand over possession of the suit property described in the plaint.

4. The case of the appellant is that the respondent nos.6 to 8 were the original owners of the property. By an unregistered lease deed dated 8th October 1973, the respondent nos.6 to 8 (or their predecessors) leased the suit property, consisting of 77 gunthas of land with structure standing thereon, to one Mr.Nasli Maneksha Randelia for a period of 99 years on the yearly rent of Rs.100/-. The said Nasli Randelia, by a sub lease deed dated 5th November 1984, granted sub-lease of the suit property to the appellant

on the yearly rent of Rs.300/-. According to the appellant, he is in possession of the suit property in pursuance of the said sub-lease deed. However, the respondent nos.1 and 2 obtained the sale deed of the suit property from respondent nos.4 to 8 and claim to have obtained possession of the suit property in pursuance of the said sale deed. According to the appellant, sale deed is void, firstly because the respondent nos.7 and 8 have not signed the sale deed and secondly because the possession could not be handed over to respondents nos.1 and 2 as the appellant was in physical possession of the property under the sub-lease deed.

5. It is worth while to note that respondent nos.5 to 8 did not appear before the trial court. In particular respondent nos.7 and 8 did not appear and did not support the case of the appellant that they have not signed the sale deed. Therefore, the grievance of the appellant that respondent nos.7 and 8 have not executed the sale deed in favour of respondent nos.1 and 2 cannot be entertained atleast at this stage.

6. As regards the appellant's contention that the

suit property was leased by predecessors of respondent nos.5 to 8 to Mr.Nesli Maneksha Randelia, by a lease deed dated 8th October 1983, the learned Judge has held that the lease deed is not registered and it not admissible in evidence. The lease was for a period of 99 years and reserved yearly rent of Rs.100/-. The lease deed, therefore, required registration u/s.17 of the Registration Act.

7. As regards the sub lease deed dated 5th November 1984, the sub-lease is for the remainder of the term which was about 87 years and reserve a yearly rent of Rs.300/-. The said sub-lease is also not registered. The sub-lease also requires registration and being unregistered, the learned Judge has rightly not relied upon the lease deed and sub lease deed.

8. Admittedly, on the date of the filing of the suit, the appellant was not in possession of the suit premises. It was for this reason that he has claimed relief of possession in the plaint.

9. The conveyance in favour of respondent nos.1 and 2 was executed on 20th may 1988. The conveyance recites that possession of the suit property has been

handed over to the respondent nos.1 and 2 as the purchasers. Though in paragraph no.18 of the plaint, the appellant has alleged illegal dispossession, he has not specified the date of alleged dispossession. It therefore appears that the appellant has not been in possession of the suit property atleast from 20th May 1988 when the respondent nos.1 and 2 took possession in pursuance of the conveyance. Suit has been filed in the year 2006. At such a long distance of time, the appellant is not entitled to any relief restraining the respondents from carrying out any construction.

10. In the circumstances, there is no merit in the appeal which is hereby dismissed.

D.G. KARNIK, J